MOTION FILED AUG 28 1958

IN THE

Supreme Court of the United States

AUGUST, SPECIAL TERM, 1958

MISC. No. 1

JOHN AARON, ET AL., *Petitioners,*

v.

WILLIAM G. COOPER, ET AL., Members of the Board of Directors of the Little Rock, Arkansas, Independent School District, and VIRGIL T. BLOSSOM, Superintendent of Schools, *Respondents.*

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

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John Bradley Minnick, appearing for himself and on behalf of all interested citizens similarly situated, moves for leave to file a brief as amicus curiae.

The specific grounds for this motion and request are as follows:

1. As a parent with children in public school, I am entitled to present my brief as a matter of right. Const., Art. VI, cl. 2; Amend. XIV, sections 1 and 5; R. S.,

section 1977, now 42 U. S. C., section 1981; *Pierce* v. *Society of Sisters* (1925) 268 U. S. 510, 534-535.

2. State law is the rule of decision in the Federal Courts unless the Constitution and laws of the United States provide or require otherwise. Federal Rules of Decision Act, First Judicial Code, section 34, First Congress, First Session, Ch. 20, 1789, 1 Stat. 73, 92, now 28 U.S.C., section 1652; *Erie R. Co.* v. *Tompkins* (1938) 304 U. S. 64, 79-80.

3. For the purpose of this and related proceedings dealing with our public free schools, the Constitution and laws of the United States do not provide or require otherwise. Const., Art. I, section 7; Const., Art. III; Const., Art. IV, section 3; Const., Art. VI, cl. 2; Const., Amendments IX, X, XI and Amendment XIV, sections 1 and 5; Acts of Admission of the New States, commencing with the Act to Admit the States of North and South Dakota, Montana and Washington on an equal footing with the original States, section 14, Fiftieth Congress, Second Session, Ch. 180, February 22, 1889, 25 Stat. 676, 680, down to through and including the Act to Admit the State of Alaska on an equal footing with the other states in all respects whatsoever, section 6 (j), Public Law 85-508, 85th Congress, Second Session, July 7, 1958, 72 Stat. 339, 342; THIRD MORRILL ACT, Fifty-First Congress, First Session, Ch. 841, August 30, 1890, 26 Stat. 417, 418, now 7 U. S. C., section 323; see also index to United States Code under Negroes; and note (1) that these laws have not been questioned or challenged upon constitutional or any other ground, (2) nor were these laws raised, briefed, cited, argued or presented to this Court in *Brown* v. *Board of Education of Topeka, Kansas* (1954) 347

U. S. 483, and (3) that these laws constitute the supreme law of the land by constitutional definition, Const., Art. VI, cl. 2; cf., *Gibbons* v. *Ogden* (1824) 9 Wheat. 1, 29, 186-239; *McCulloch* v. *Maryland* (1819) 4 Wheat. 316, 322-330, 400-437.

4. The first opinion of this Court in a twice mooted case, *Brown, supra,* is not legally sufficient authority to negative any federal, state or local law because the defendant was entitled to dismissal as a matter of right. Constitution, *supra;* Rules of Decision Act, *supra;* Third Morrill Act, *supra;* Act to Admit the State of Oklahoma (1906) 34 Stat. 271; *United States* v. *W. T. Grant Co.* (1935) 345 U. S. 629, 632; *Erie R. Co.* v. *Tompkins, supra;* stipulation of equality filed by counsel for the plaintiffs in *Brown, supra,* and the related cases; and the action of the Board of Education of Topeka, Kansas, when it adopted its own plan in 1953 to eliminate separate schools in Topeka, there being no state law or constitutional provision in Kansas which provided or required otherwise.

Respectfully submitted,

JOHN BRADLEY MINNICK
Pro Se.

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BRIEF AS AMICUS CURIAE

STATEMENT OF THE CASE

I. The Plan

A. The voluntary plan was approved by the Federal Judiciary over the objections of the petitioners upon authority of the sociological opinion of this Court in a moot case.

B. The plan did not work.

II. The Stay

A. The plan was stayed not only by the District Court below; it had been stayed also by the state court. Both stays were granted after full and complete hearings at the local level.

B. The stay granted by the District Court below was reversed by the United States Court of Appeals for the Eighth Circuit on authority of the sociological opinion of this Court in a moot case; but the reversal was stayed pending perfection of an appeal by the respondents.

III. The Petition

A. Petitioners bring this action to cut off respondent's appeal and to accomplish what was requested in the petition for writ of certiorari, No. 1095, October Term, 1957, denied, June 30, 1958.

B. A special term of Court has been convened to hear the matter.

STATEMENT OF THE ARGUMENT

I. The Problem

The problem is racial, but the issues are constitutional. The problem has created a seemingly irreconcilable conflict between the Federal Judiciary and State Law concerning the basic, fixed principles governing separate schools in public education. Accordingly, something must yield if the problem is to be solved. Only those who are lacking in responsible humility will have a confident solution for problems as intractable as the frictions attributable to differences of race, color and religion. *Beauharnais* v. *Illinois* (1952) 343 U. S. 250, 262.

II. The Issue

The issue is not integration. It is not segregation. The issue is whether a sociological opinion in a moot case is legally sufficient to negative the supreme law of the land.

III. The Law

A. The Judicial Precedent

1. According to the Federal Judiciary, the "law" was settled in *Brown* v. *Board of Education of Topeka, Kansas* (May 17, 1954) 347 U. S. 483, a twice mooted case; and by the subsequent "mandate" (May 31, 1955), 349 U. S. 294, which purports to negative all provisions of federal, state and local laws which come in conflict therewith.

2. The "settled" part of the federal law about which the Federal Judiciary and others speak, and which has been generally conceded by state and local counsel for various school boards from Arlington, Virginia, to Dallas, Texas, by way of Little Rock, Arkansas, has no basis or foundation outside of the claims of social scientists affirmed by this Court in a moot case, *Brown* v. *Board of Education of Topeka, Kansas, supra.*

3. The generally accepted definition of a "moot case" in both our state and federal courts is as follows:

> "A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights." *Adams* v. *Union R. Co.* (1899) 21 R. I. 134, 42 Atl. 515, 44 L. R. A. 273, 276; see also, 27 Words and Phrases, Moot Case, pp. 536-539 and 1958 cumulative supplement; Black's Law Dictionary, Third Edition, p. 1203.

4. The five original so-called "segregation cases" (*Brown* and related cases, *supra*) were first mooted on the facts by the stipulation of equality filed by counsel for the plaintiffs in order to raise an abstract psychological question which did not arise upon existing facts or rights. In addition, the *Brown* case upon which the opinion rests was mooted by the action of the Board

of Education of Topeka in 1953 when it changed its policy and set up its own plan to eliminate separate schools in Topeka, there being no state law or constitutional provision which provided or required otherwise.

5. An opinion in a moot case is not legally sufficient to settle any law because the defendant is entitled to dismissal as a matter of right. *United States* v. *W. T. Grant Co.* (1953) 345 U. S. 629, 632.

B. The Constitutional Law

1. The Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land by constitutional definition. Const., Art. VI, cl. 2; *Gibbons* v. *Ogden* (1824) 9 Wheat. 1; *McCulloch* v. *Maryland* (1819) 4 Wheat. 316.

2. The Constitution is completely silent upon the question education.

3. The power to enforce the provisions of section 1 of the Fourteenth Amendment by appropriate legislation was retained specifically by Congress. Const., Amend. XIV, section 5.

4. Congress acted in pursuance of the Constitution and under section 5 of the Fourteenth Amendment upon the question of separate schools in public education. Third Morrill Act (1890) 26 Stat. 418, now 7 U. S. C., section 323, as indexed in the United States Code under Negroes; and the Act to Admit the State of Oklahoma (1906) 34 Stat. 271.

5. These and related Acts of Congress were not questioned nor challenged upon constitutional or any other ground in *Brown, supra,* nor were these laws of the United States presented, cited, briefed, argued or other-

wise put in issue so that the people could be informed upon the same.

6. The Acts of Admission of the New States provide that the states shall have exclusive control over their public schools forever, including the right to establish and maintain separate schools in public education. These provisions were developed out of the Morrill Acts relating to our Land Grant Colleges. Thus, it appears that there shall be no distinction on account of race or color, provided that separate schools heretofore or hereafter established shall be held by the Federal Judiciary and the Federal Executive to be a compliance if the funds are divided equitably. *Third Morrill Act, supra.* The Acts of Admission and the Morrill Acts contain no severability clause. Hence to negative a substantive provision is to negative the whole and thereby destroy the Union and the Land Grant Colleges.

7. State law is the rule of decision because there is no conflict between the laws of the United States and the laws of the several states; and the Constitution does not provide or require otherwise. Rules of Decision Act, 28 U. S. C., section 1652; *Erie R. Co.* v. *Tompkins* (1938) 304 U. S. 64.

IV. Conclusion

Wherefore it is concluded upon the case and upon the law that the petition should be denied.

Respectfully submitted,

JOHN BRADLEY MINNICK,
Pro Se.